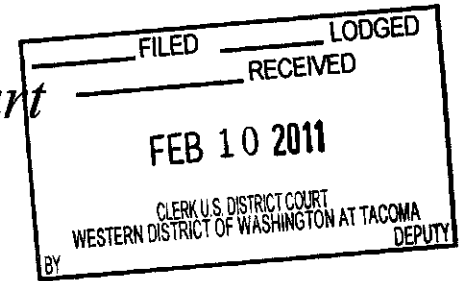


01-CR-05509-ORD

*District Court**for**Western District of Washington*

*Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender
(Probation Form 49, Waiver of Hearing is Attached)*

Name of Offender: Darryl Allen Burgess**Case Number:** CR01-5509-001**Name of Judicial Officer:** The Honorable Benjamin H. Settle**Date of Original Sentence:** 04-19-02**Date of Report:** 2/4/11**Original Offense:** Knowingly Causing Another to Engage in a Sexual Act**Original Sentence:** 108 months custody; five years supervised release**Type of Supervision:** Supervised Release**Date Supervision Commenced:** 06/17/09**Special Conditions Imposed:**

- | | | |
|---|---|--|
| <input type="checkbox"/> Substance Abuse | <input checked="" type="checkbox"/> Financial Disclosure | <input type="checkbox"/> Restitution |
| <input checked="" type="checkbox"/> Mental Health | <input type="checkbox"/> Fine | <input type="checkbox"/> Community Service |
| <input checked="" type="checkbox"/> Sex Offense | | |
| <input checked="" type="checkbox"/> Other: Sex Offender Treatment; Search and Seizure; No Internet Access without Permission; No Pornography; Sex Offender Registration. | | |

PETITIONING THE COURT

☐ To extend the term of supervision☒ To modify the conditions of supervision as follows:

The defendant shall participate as instructed by the U.S. Probation Officer in a program approved by the probation office for treatment of narcotic addiction, drug dependency, or substance abuse, which may include testing to determine if the defendant has reverted to the use of drugs or alcohol. The defendant shall also abstain from the use of alcohol and/or other intoxicants during the term of supervision. Offender must contribute towards the cost of any programs, to the extent the defendant is financially able to do so, as determined by the U.S. Probation Officer. Testing shall occur no more than eight times per month.

The defendant shall submit to one drug test within 15 days of placement on probation (or release from imprisonment) and at least two periodic drug tests thereafter not to exceed eight valid tests per month pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).

The Honorable Benjamin H. Settle
Request for Modifying the
Conditions or Term of Supervision
with Consent of Offender

Page 2

CAUSE

On April 19, 2002, Darryl Burgess was sentenced by The Honorable Jack E. Tanner, to 108 months in custody. At the time of sentencing, the Court did not clearly indicate on the judgement whether or not Mr. Burgess would be required to submit to urinalysis testing while on supervision. The condition was neither waived, nor directly imposed. Given the seriousness of the underlying offense, and Mr. Burgess' amenability to provide urine samples, on January 28, 2011, a urine sample was collected. This sample tested positive for marijuana.

On February 4, 2011, Mr. Burgess reported to the probation office to discuss his positive test. He admitted to being around a family member who had been smoking marijuana, on or about January 27, 2011. He further added that he may have passively ingested the drug through "second hand smoke." He acknowledged that it was a poor decision to be around someone engaging in illicit activity. He has agreed to undergo a substance abuse treatment assessment, as well as regular urinalysis testing. Moreover, he has agreed to have his conditions of supervision modified to allow for this. His attorney, Peter Avenia, has been contacted and has not offered any objection to this modification. As such, it is recommended that Your Honor sign this report, imposing these conditions listed above.

Respectfully submitted,



Steven M. McNickle
Senior U.S. Probation Officer

APPROVED:

Connie Smith
Chief U.S. Probation and Pretrial Services Officer

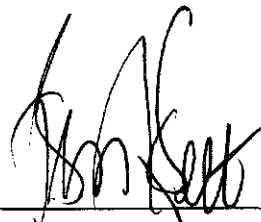


Pam Murray
Supervising U.S. Probation Officer

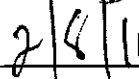
SMM
2/4/11

THE COURT FINDS PROBABLE CAUSE AND ORDERS:

- ☐ No Action Approved
- ☐ The Extension of Supervision as noted above
- ☐ The Modification of Conditions as noted above
- ☐ Other



Signature of Judicial Officer



Date

PROB 49
(5/97)

United States District Court

WESTERN District of Washington

Docket Number: CR01-5509JET

Waiver of Hearing to Modify Conditions of Probation

I, DARRYL ALLEN BURGESS, have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

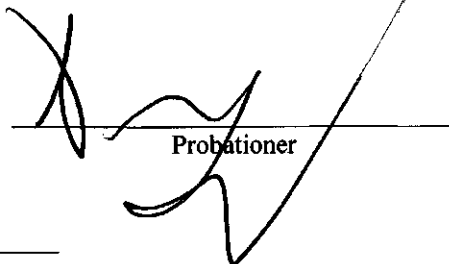
The defendant shall participate as instructed by the U.S. Probation Officer in a program approved by the probation office for treatment of narcotic addiction, drug dependency, or substance abuse, which may include testing to determine if the defendant has reverted to the use of drugs or alcohol. The defendant shall also abstain from the use of alcohol and/or other intoxicants during the term of supervision. The defendant must contribute towards the cost of any programs, to the extent the defendant is financially able to do so, as determined by the U.S. Probation Officer.

The defendant shall submit to one drug test within 15 days of placement on probation (or release from imprisonment) and at least two periodic drug tests thereafter not to exceed eight valid tests per month pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).

Witness:


U.S. Probation Officer

Signed:


Probationer

2/4/11

Date